

REMARKS / DISCUSSION OF ISSUES

Claims 15, 18-20, 23-25, 28-30, and 33-41 are pending in the application. Claims 17, 22, 27, and 32 are canceled herein, and claims 35-41 are newly added. No new matter is added.

The Office action rejects claims 15, 18-20, 23-25, 28-30, and 33-34 under 35 U.S.C. 103(a) over Cho (WO 00/13426), Ozkan (USP 5,838,686), and Aftelak (WO 00/07401). The applicants respectfully traverse this rejection.

The applicants respectfully maintain that there is no apparent reason why one of skill in the art would combine Cho, Ozkan, and Aftelak in the manner claimed by the applicants, as discussed further below.

The applicants further maintain that even if one were to combine Cho, Ozkan, and Aftelak, the combination of Cho, Ozkan, and Aftelak fails to disclose the elements of the applicants' claimed invention. The combination of Cho, Ozkan, and Aftelak fails to disclose a random access channel status message that includes an indicated highest available data rate on each random access channel, as specifically claimed in claim 15. Independent claims 20, 25, and 30 include similar features.

The Office action acknowledges that neither Cho nor Ozkan discloses a random access channel status message that includes an indication of data rates, and relies on Aftelak for this teaching. The Office action asserts that Aftelak provides this teaching at "pages 8 and 9". The applicants respectfully disagree with this assertion.

The applicants respectfully note that it is the duty of the Examiner to specifically identify each and every element and limitation of a claim in the cited reference as per 37 CFR 1.104(c)(2) and MPEP 707, which explicitly state that "the particular part relied on must be designated" and "the pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." The Office action fails to identify which elements in Aftelak are asserted to correspond to an indicated highest available data rate for each of a plurality of channels. A cite to two pages of description does not conform to the requirement to designate a

particular part relied upon, and does not explain the pertinence of Aftelak with regard to a status message that includes an indicated highest data rate for each of a plurality of random access channels.

The Office action is not in compliance with 37 C.F.R. §1.104(c)(2) and MPEP 707 because the pertinence of Aftelak with respect to each of the elements of the applicants' independent claims is not clearly explained. The goal of prosecution has not been met under MPEP 706 because the Office has not clearly articulated its rejection so that the applicant could have the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity.

The Office action references Aftelak's disclosure that the status report may indicate which cells in a network can support high data rates, but the applicants respectfully maintain that this teaching does not correspond to a status message from a base station that includes an indicated highest data rate for each of a plurality of random access channels. Whether a base station of a cell supports high data rates does not indicate the availability of particular data rates on each channel, as specifically claimed by the applicants.

Additionally, in *KSR Int'l. Co. v. Teleflex, Inc.*, the Supreme Court noted that the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and that it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed:

"Often, it will be necessary ... to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an **apparent reason** to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis **should be made explicit**." KSR, 82 USPQ2d 1385 at 1396 (emphasis added).

As noted above, the applicants respectfully maintain that there is no apparent reason why one of skill in the art would combine Cho, Ozkan, and Aftelak in the manner claimed by the applicants, without improper hindsight reconstruction based

on the applicants' disclosure. Cho teaches a conventional communication system comprising a base station and a plurality of mobile stations; each mobile station requests a given level of bandwidth/data-rate, and if the requested bandwidth is available on a channel, the base station assigns the channel to the mobile station. Ozkan teaches a multiplexer that combines video data from a plurality of sources for transmission over a satellite link. Ozkan monitors the input data from the sources to determine a measure of need for bandwidth by each channel and controls the encoding bit-rate for each channel to best satisfy these needs.

The Office action fails to identify an apparent reason why one of skill in the art of mobile communications would have a reason to allocate less bandwidth than is actually available, based on Ozkan's teachings of bandwidth allocation among video channels on a satellite network. That is, absent the applicants' teaching of announcing less bandwidth than available on a mobile network, one of skill in the art would have no apparent reason to look for methods of allocating bandwidth among channels of a mobile network.

The Office action asserts that it would have been obvious to combine Cho and Ozkan because "such a modification would produce acceptable quality, limiting the use of unnecessary bits and the bit rate being insufficient to reproduce data". The applicants respectfully disagree with this assertion. This asserted reason is applicable only to the control of data that can be communicated in a lossy manner, such as audio and video data. It does not apply to a general-purpose mobile network as taught by Cho.

Ozkan controls the bit rate used for encoding video data, and when congestion occurs, or is predicted to occur, the allocated bit rate is lowered, thereby requiring that the image be encoded at a lesser resolution. As stated in the Office action's asserted reason for applying Ozkan to Cho, Ozkan's teachings are applicable to data whose quality can be reduced when "the bit rate [is] insufficient to accurately reproduce the data". Inaccurately reproducing data, as taught in Ozkan as a means of allocating bandwidth among video channels, is unsuitable for use in a

general-purpose mobile network, and one of skill in the art would have no apparent reason to render Cho's design unsuitable for its intended use as a mobile network.

Because there is no apparent reason to combine Cho, Ozkan, and Aftelak, and because even assuming in argument that they are combined, such a combination does not disclose each of the elements of the applicants' claims, the applicants respectfully maintain that the rejection of claims 15, 18-20, 23-25, 28-30, and 33-34 under 35 U.S.C. 103(a) over Cho, Ozkan, and Aftelak is unfounded, and should be withdrawn.

With regard to the added claims 35-41, the applicants further note that the combination of Cho, Ozkan, and Aftelak does not disclose an indicated highest available data rate that serves to identify whether a channel is available, and does not disclose an indicated highest available data rate that is lower than a highest data rate that could be made available to the at least one random access channel, based on a potential future demand for capacity, as claimed by the applicants.

In view of the foregoing, the applicants respectfully request that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application to be in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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